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PAUL REICHE III and ROBERT FREDERICK FORD

11

12 UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

14

15 STARDOCK SYSTEMS, INC.,

Case No. 4:17-CV-07025-SBA

16 Plaintiff,

17 v.

18 PAUL REICHE III and ROBERT
FREDERICK FORD,

**DECLARATION OF STEPHEN C,
STEINBERG IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION SHOULD
NOT BE GRANTED**

19 Defendants.

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21 PAUL REICHE III and ROBERT
FREDERICK FORD,

Complaint Filed: Dec. 8, 2017
Trial Date: June 24, 2019

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Counter-Claimants,

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v.

24 STARDOCK SYSTEMS, INC.,

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Counter-Defendant.

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1 I, Stephen C. Steinberg, declare as follows:

2 1. I am an attorney at law admitted to practice in all courts of the State of California.
 3 I am a principal in the law firm of Bartko, Zankel, Bunzel & Miller, attorneys of record for
 4 Defendants and Counter-Claimants Paul Reiche III (“Reiche”) and Robert Frederick Ford (“Ford”)
 5 (together, “Reiche and Ford”) in the above-captioned matter. The matters in this Declaration are
 6 true of my own personal knowledge, and if called upon as a witness, I could and would
 7 competently testify thereto.

8 2. Atari, Inc. filed for bankruptcy in the U.S. Bankruptcy Court for the Southern
 9 District of New York on January 21, 2013. Attached as **Exhibit 17** is a copy of the June 14, 2013
 10 Order of that court approving procedures for bidding on the “Star Control Franchise” defined as
 11 including only “Star Control 3” (and not Star Control or Star Control II). *See pp. 50, 61.*

12 3. Attached as **Exhibit 18** is a copy of the July 16, 2018 Order Authorizing the Sale of
 13 the “Star Control Franchise,” defined as the “Star Control Assets” (*see p. 1*), attaching a Purchase
 14 Agreement between Atari and Stardock Systems, Inc. for the “Star Control Assets.” The Purchase
 15 Agreement defines the Purchased Assets as including the Intellectual Property identified on
 16 Schedule 1.01(a), the contracts listed on Schedule 2.01(b), and certain causes of action related to
 17 the Intellectual Property, and excludes any other assets and properties of Atari. *See § 2.01-02.* No
 18 schedules were attached to this agreement.

19 4. The purported agreement and schedules attached to Stardock’s Second Amended
 20 Complaint only list the following intellectual property as purportedly being purchased by Stardock
 21 from Atari: a) U.S. Trademark Registration No. 2,046,036 for the STAR CONTROL mark; and
 22 b) U.S. Copyright Registration No. PA 799-000 for Star Control 3. *See Dkt. 51-1, Ex. D, pp. 201-*
 23 *210.* And it defines the “Star Control Franchise” as including only “Star Control 3” (and not Star
 24 Control or Star Control II). *Id.* at p. 211.

25 5. On or about March 28, 2018, we served Stardock with a First Set of Interrogatories,
 26 including the following Interrogatory No. 11: “Describe in detail every element of Star Control I
 27 and II incorporated into Star Control: Origins, including but not limited to characters, spaceships,
 28 and planets.”

1 6. On or about April 27, 2018, Stardock served responses to the aforementioned
 2 interrogatories, including the following Response to Interrogatory No. 11: “To the extent
 3 elements of Star Control I and II are incorporated into Star Control: Origins, such information is
 4 publically available and can be readily ascertained by comparing the games. Stardock is not
 5 otherwise presently aware of every element (if any) of Star Control I and II incorporated into Star
 6 Control: Origins.”

7 7. On or about May 7, 2018, I sent Stardock’s counsel a meet and confer email noting
 8 that the full version of Star Control: Origins was not publicly available and asking that Stardock
 9 produce a complete copy of the game.

10 8. On or about May 23, 2018, I met and conferred with Stardock’s counsel, Rob
 11 Weikert and Dawn Valentine, about various deficiencies in their discovery responses, including
 12 Stardock’s failure to respond to Interrogatory No. 11 or to produce Star Control: Origins, but they
 13 ultimately refused to produce the game at that time.

14 9. On or about July 9, 2018, we served Stardock with a second set of requests for
 15 production asking it to produce “Copies of any and all versions of Star Control: Origins that have
 16 been or will be released including, but not limited to, (1) the first Beta version, called Fleet
 17 Battles, which was made available in or around October 2017, (2) the second Beta version, called
 18 Fleet Battles 2, which was made available on or around April 2018, and (3) the final version
 19 scheduled for release on September 20, 2018.”

20 10. On or about August 8, 2018, Stardock responded that “Stardock will produce non-
 21 privileged, responsive documents within its possession, custody or control within 30 days of these
 22 responses.” Attached as **Exhibit 19** is a copy of Stardock’s aforementioned responses.

23 11. On or about August 17 and 22, 2018, we sent DMCA notices to Valve and GOG,
 24 respectively, concerning certain content packs from and a beta version of Star Control: Origins
 25 called Fleet Battles, that were publicly available.

26 12. On August 22, 2018, I received a letter from Mr. Weikert concerning these notices,
 27 to which I responded on August 23. Mr. Weikert sent me another email in the morning on August
 28 24 mostly raising the same points I had already responded to and demanding another response by

1 noon that day. I understand that my co-counsel, Mark Palmer, then had a series of phone calls
 2 with Stardock's co-counsel, Dave May, on August 26, 28, and 30, which included discussion
 3 about DMCA notices and the infringing content published to date.

4 13. On or about September 6, 2018, I received an email from Mr. Weikert notifying us
 5 of their intent to file the present motion to enjoin my clients from serving any further DMCA
 6 notices as to Star Control: Origins. I responded that:

7 I don't think we have ever said that we intend to serve similar notices in the future,
 8 only that we may depending on whatever content ends up being put out by
 9 Stardock and where. We still have not seen the upcoming version of Star Control:
 10 Origins so I cannot say whether we think it infringes or not, but my understanding
 11 is that Stardock will be producing a copy of it tomorrow in response to our requests
 12 for production, so we will be able to evaluate it after that.

13 Attached as **Exhibit 20** is a copy of the aforementioned email string.

14 14. That evening, Mr. Palmer and I spoke with Mr. Weikert and Mr. May by phone
 15 about their planned motion. We explained the basis for our clients' prior DMCA notices, and
 16 reiterated that as we had not yet seen the version of Star Control: Origins to be released on
 17 September 20, my clients were still not sure if they would serve further DMCA notices to Valve,
 18 GOG, or any other place(s) where the game might be published in addition to Stardock's own
 19 website. I suggested that Stardock's motion seemed premature at best, and that it at least wait
 20 until we received a copy of the game and had a chance to review it. I also asked if Stardock would
 21 be producing the game the following day as promised in its aforementioned discovery responses
 22 and Mr. Weikert refused to say one way or the other.

23 15. On September 7, 2018 at about 4:37 pm, we received a production of documents
 24 from Stardock that did not include any version of Star Control: Origins, including the one to be
 25 released on September 20 or any of the prior versions released to members of the public. Stardock
 26 filed the present motion just over an hour later.

27 16. Since then, I emailed Mr. Weikert two more times and Stardock still refuses to
 28 produce any version of Star Control: Origins, including the one to be released on September 20,
 unless we agree not to show it to our clients and to the relief sought by Stardock's motion.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct, and this Declaration was executed this 17th day of September 2018,
3 at San Francisco, California.

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5 /s/ Stephen C. Steinberg

6 STEPHEN C. STEINBERG

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